

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

JEREMY WRIGLEY,

Petitioner,

v.

**CIVIL ACTION NO. 3:07-CV-119
(BAILEY)**

WAYNE A. PHILLIPS, Warden,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION
THAT CASE BE DISMISSED AND STRICKEN FROM DOCKET**

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. By standing Order, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Seibert filed his R & R on January 2, 2008 [Doc. 25]. In that filing, the magistrate judge recommended that this Court deny and dismiss the *pro se* plaintiff's complaint filed under 28 U.S.C. § 2241 [Civ. Doc. 1] because the petitioner has already been granted the relief sought in the case -- proper consideration of his placement under § 3621(b).

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or

recommendation to which no objections are addressed. **Thomas v. Arn**, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R & R were due by January 16, 2008 [Doc. 25], pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). To date, no objections to the R & R have been filed. Accordingly, this Court will review the report and recommendation for clear error.

The petitioner seeks an order directing the Bureau of Prisons ("BOP") to transfer him to a Residential Release Center ("RRC") for the last six months of his 18 month term of imprisonment currently being served at FCI Morgantown. On October 5, 2007, the petitioner's unit team conducted a review of his case and drafted a recommendation for the petitioner's placement in a RRC for 30-45 days prior to his release.

In the petition, he asserts that the BOP's policy of transferring prisoners to a RRC for the last 10% of their term of imprisonment has been ruled unconstitutional. The Government contends that the petition should be dismissed as moot because the BOP considered the five factors set forth in 18 U.S.C. § 3621(b) in determining the petitioner's referral date. This Court agrees. See **Murdock v. Gutierrez**, 3:06-cv-105 (N.D.W.Va. July 24, 2007) (Bailey, D.J.).

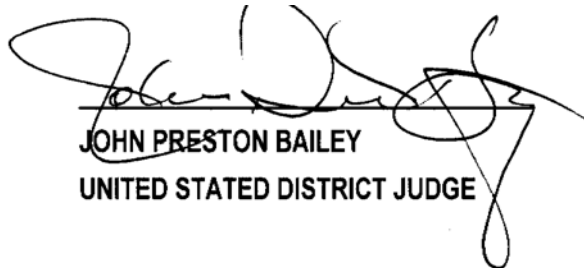
Upon careful review of the report and recommendation, it is the opinion of this Court that the Magistrate Judge's **Report and Recommendation [Doc. 25]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. As such, the respondent's Motion to Dismiss **[Doc. 14]** and Amended Motion to

Dismiss as Moot [**Doc. 16**] are hereby **GRANTED**, and the petitioner's Motion to Proceed [**Doc. 20**] is **DENIED**. Accordingly, this Court hereby **DENIES** the 2241 petition [**Doc. 1**] and **ORDERS** it **STRICKEN** it from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to mail a true copy of this Order to the *pro se* petitioner and to transmit copies to all counsel of record herein.

DATED: January 31, 2008.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE